1944 K File No. Cr. A. Kanara 44

Legal DEPARTMENT

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Subject:—

Criminal Appeals in the High Court of Bombay against the order of acquittals from Kanara District. ——

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K.V. Velankar

Superintendent,
Branch, Legal Department.

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Opinion in the case of Imperator Vs. Jetta Bhoira and others (accused 1 to 5).

These accused were charged under S.395 I.P.C. or in the alternative under Sec.412 I.P.C. They were all acquitted by the learned Sessions Judge agreeing with the unanimous opinion of the assessors. It is proposed to file an appeal against accused 1 only.

According to the prosecution there was a dacoity committed in the house of the complainant Kuppa on the night of Monday the 27th December 1943. At the time of the dacoity the only inmates in the house of the complainant were his wife Mangli and her minor son; there was also another person named Annappa who with the permission of the complainant was sleeping that night on the verandah of the complainant's house. The thieves arrived there at 10 P.M. , questioned Annappa, robbed him of the Cash of Re.1 As.10. In the struggle the thieves wanted to remove forcibly Annappa's left ear ornament but did not succeed. Annappa raised a cry that his ear was bleeding as a result of force used by the thieves; the thieves broke open the door of the house; thereupon Mangli came out, questioned the thieves who flashed a torch light on her face with the result that she could see the faces of the theives. She was gagged and blind-folded, was held by 2 thieves. Two other thieves went into the house took away cash ornaments etc.from the house. At the cries raised by Mangli her husband, and others proceeded to the complainant's house.

Next day Kuppa the complainant went to Chittar where the Police Patil resides and gave him information of the offence. The Police Patel went to the scene of the offence and made a list of articles missing and submitted his report to Honavar Police Station.

On 30-12-43 P.S.I. took up the investigation

of the case. On January 2 he arrested accused 1 who produced properties articles 4 to 8 before the Police, and panchas. On January 3 1944 accused 1 was sent to the Magisterial custody and a remand of 7 days obtained; the P.S.I. ~~took~~ wrote a yadi to the Resident Magistrate, F.C. Honavar to record his confession. Accused 1's confession was recorded on January 9th/1944.

On January 7, 1944 accused 2 was arrested at Manki. He pointed out a gunny bag on the road which was attached. On January 8 accused 2 volunteered to show property. He took the Police and Panchas dug out in a place behind his house and produced four 2 annas coins with hooks tied in a cloth. Accused 2 was sent to the Third Class Magistrate Honavar, for Magisterial custody and a remand for 7 days obtained. Accused 3 was arrested on January 8, 1944, and produced before the P.S.I. with the property produced by him consisting of silver rupee coins, currency notes, a white panji and a blue saree. He was sent to the Magisterial custody and remand for 7 days obtained. An identification parade was held at which the complainant's wife Mangali identified accused 3. On January 20 1944 accused 4 was arrested and was sent to the Magisterial Custody. Accused 4's confession was recorded on January 28, 1944. Accused 5 was arrested on January 25,1944 and was sent to Magisterial custody. On 1st February 1944, an identification parade was held at which accused 5 was identified by the complainant's wife Mangali.

There is enough evidence to prove the dacoity at the complainant's house on 27-12-1943.

The evidence against accused 1,4 consists of their retracted confessions and production by them of certain stolen property and the evidence of Waman Ex.22 Subraya Ex.25 and Raza Ex. as regards accused 3 and 5 the evidence consists of their identification by Mangli wife of the complainant.

As regards confessions it was argued by the defence that these confessions were not true and voluntary, being obtained by torture and promise by the Police. These accused did not say anything about these confessions before the C.M.

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but they retracted the confessions before the Sessions Court. These allegations about torture and promise were denied by the P.S.I. With regard to the accused 1's confessions, it is to be noted that he was arrested on 2nd January 1944, he was sent to the Magisterial custody and 7 days' remand for investigation was obtained by the Police. On 3rd January the P.S.I. sent a yadi to the Magistrate to record his confession which was recorded by the Magistrate on the 9th January. From 3rd to 9th January the accused was in Magisterial custody. If so it is wrong to assume that during this period of 6 days he was subjected to police influence or police tor--ture. It is true that there was delay in recording the confession and there is nothing on the record why there was so much delay in recording the confession. It appears from the District Magistrate's letter to Remembrancer of Legal Affairs that the delay in recording the confession was due to the fact that the Magistrate before whom the accused was produced was a Second Class Magistrate who was not competent to record the confession under Sec.164 Cr.P.C. and the confession had to be recorded by the Resident Magistrate F.C. Kuvta on 9-1-44, during his camp at Honavar. The delay does not vitiate this confession as being the outcome of any police influence or torture. Similarly the confession of accused 4 was recorded after 8 days after he was sent to the Magisterial custody; during the period the accused was kept in the lock up of the Magistrate. This lock up is separate from the Police lock-up though both these lockups are in the same premises and are near each other. The key of the Magisterial lock-up is in charge of the treasury police guard and though the guard is subordinate to the P.S.I. still he cannot part with the key of the lock-up without the permission of the Jail Superintendent who is a Third Class Magistrate. It is not possible that the P.S.I. would have access to this lock-up.

There should be no difficulty in holding the confession as voluntary. It is also true considering that it is a detailed confession.

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In the case of accused 4 I am unable to find out the cause of delay in recording his confession;as we are only concerned/ with accused 1, it is not necessary to determine the cause of delay in the case of accused 4. It is not also necessary to consider the view of the learned Sessions Judge that there was circumstantial evidence to show that the Police had held out promise to this accused that he would be made an approver. There is no corroboration to the retracted confession of accused 4.

As regards accused 1 he has produced certain articles before the Police and panchas which are alleged to be the property stolen at the ~~xxxxxxxx~~ time of dacoity The articles produced by this accused are a silver talisman with a silver chain and two silver caskets article 4, a piece of silver string article 6, a piece of alleged gold article 7 and a peli (a grass purse) article 8. These articles were produced by the accused from his house immediately after his arrest on 2-1-1944. The learned Sessions Judge holds articles 6,7,8 are not stolen property as they are not mentioned in the list Ex.7 given by the complainant to the Police Besides the complainant's wife Mangli admitted that article 8 (peli(grass purse) is a common article used by other people in the village. Accused 1 claims article 8 as belonging to his wife. As regards art.4 silver talisman which is mentioned in the complaintant's list is claimed by the complainant as well as by the accused. There are no special marks of identification on any of the articles and these articles being of common use they are incapable of identification -- according to the learned Judge As regards the identification of art.4 the silver talisman, it was clearly mentioned in the list given by the complainant the very next day in the morning. Though there is no mark of identification and though the article is of common use still it is capable of identification by

persons who use it. Besides the Talisman was strung to a silver chain and there ~~was~~ were 8 2 anna coins with hooks and a bunch of silver beads As this article as well as articles 7, 8 which are of common use, are claimed by the accused it is difficult to hold that the identification of these articles by the complainant and his wife is satisfactory; The result is that the confession of accused 1 remains uncorroborated.

Although an accused person can be convicted on his own retracted confession still such a confession required slight corroboration as pointed in 35 Bom.L.R. 371 Emperor Vs. Krishna Babaji. In this case there being no corroboration the confession would not be sufficient to base conviction. The evidence of accused's wife, Narayan 20 does not inspire confidence. She has made different statements which are not quite reconcilable. Even according to her story accused 1 must not have been absent on the night of dacoity.

Considering the evidence as a whole I am of opinion that the chances of success are too remote if an appeal against the order of acquittal of accused 1 is preferred.

Bombay,
28th July 1944

B G Rao
Government Pleader, High Court.